

§ 346.10

paragraph (a)(1) of this section, or taking any action under paragraph (b) of this section, the FDIC will provide written notice and an opportunity to present information to the FDIC concerning any relevant facts or circumstances relating to the matter.

(d) *Inadvertent or de minimis errors.* Inadvertent or de minimis errors in annual reports or other documents filed with the FDIC under §§346.6 or 346.7 will not subject the reporting party to any penalty.

(e) *Enforcement of provisions in covered agreements.* No provision of this part shall be construed as authorizing the FDIC to enforce the provisions of any covered agreement.

[66 FR 2099, Jan. 10, 2001, as amended at 66 FR 14071, Mar. 9, 2001]

§ 346.10 Transition provisions.

(a) *Disclosure of covered agreements entered into before the effective date of this part.* The following disclosure requirements apply to covered agreements that were entered into after November 12, 1999, and that terminated before April 1, 2001.

(1) *Disclosure to the public.* Each NGEF and each insured depository institution or affiliate that was a party to the agreement must make the agreement available to the public under §346.6 until at least April 1, 2002.

(2) *Disclosure to the relevant supervisory agency.* (i) Each NGEF that was a party to the agreement must make the agreement available to the relevant supervisory agency under §346.6 until at least April 1, 2002.

(ii) Each insured depository institution or affiliate that was a party to the agreement must, by June 30, 2001, provide each relevant supervisory agency either—

(A) A copy of the agreement under §346.6(d)(1)(i); or

(B) The information described in §346.6(d)(1)(ii) for each agreement.

(b) *Filing of annual reports that relate to fiscal years ending on or before December 31, 2000.* In the event that a NGEF, insured depository institution or affiliate has any information to report under §346.7 for a fiscal year that ends on or before December 31, 2000, and that concerns a covered agreement entered into between May 12, 2000, and

12 CFR Ch. III (1–1–10 Edition)

December 31, 2000, the annual report for that fiscal year must be provided no later than June 30, 2001, to—

(1) Each relevant supervisory agency; or

(2) In the case of a NGEF, to an insured depository institution or affiliate that is a party to the agreement in accordance with §346.7(f)(2).

§ 346.11 Other definitions and rules of construction used in this part.

(a) *Affiliate.* “Affiliate” means—

(1) Any company that controls, is controlled by, or is under common control with another company; and

(2) For the purpose of determining whether an agreement is a covered agreement under §346.2, an “affiliate” includes any company that would be under common control or merged with another company on consummation of any transaction pending before a Federal banking agency at the time—

(i) The parties enter into the agreement; and

(ii) The NGEF that is a party to the agreement makes a CRA communication, as described in §346.3.

(b) *Control.* “Control” is defined in section 2(a) of the Bank Holding Company Act (12 U.S.C. 1841(a)).

(c) *CRA affiliate.* A “CRA affiliate” of an insured depository institution is any company that is an affiliate of an insured depository institution to the extent, and only to the extent, that the activities of the affiliate were considered by the appropriate Federal banking agency when evaluating the CRA performance of the institution at its most recent CRA examination prior to the agreement. An insured depository institution or affiliate also may designate any company as a CRA affiliate at any time prior to the time a covered agreement is entered into by informing the NGEF that is a party to the agreement of such designation.

(d) *CRA public file.* “CRA public file” means the public file maintained by an insured depository institution and described in 12 CFR 345.43.

(e) *Executive officer.* The term “executive officer” has the same meaning as in §215.2(e)(1) of the Board of Governors of the Federal Reserve System’s Regulation O (12 CFR 215.2(e)(1)).